

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA
upon the relation and for the use of the
TENNESSEE VALLEY AUTHORITY,
Plaintiff,

v.

No. 3:20-cv-690-CWR-FKB

AN EASEMENT AND RIGHT-OF-WAY
OVER 1.44 ACRES OF LAND, MORE
OR LESS, IN RANKIN COUNTY,
MISSISSIPPI, and
DAVID LEON HOWIE, AS TRUSTEE
WITH POWER OF SALE OF
THE HOMER LEE HOWIE LIVING
TRUST AS AMENDED AND
RESTATED MAY 31, 2013,
Defendants.

COMPLAINT

1. This is an action of a civil nature brought by the United States of America upon the relation and for the use of the Tennessee Valley Authority for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Tennessee Valley Authority Act of 1933, *as amended*, 16 U.S.C. §§ 831 et seq.

3. The public use for which the property is taken is the erection, operation, and maintenance of electric power transmission circuits and communication circuits.

4. The property interest to be acquired is a permanent easement and right-of-way.

5. The easement and right-of-way herein condemned is described in Attachment 1 hereto and made a part hereof.

6. The persons known to the Plaintiff to have or who may claim an interest in said property are as follows:

a. David Leon Howie, as Trustee with power of sale of The Homer Lee Howie Living Trust as Amended and Restated May 31, 2013, owns said property in fee simple by virtue of deeds recorded in Deed Books 2005 and 2014, pages 18058 and 3100, respectively, in the office of the Chancery Court Clerk of Rankin County, Mississippi.

b. County, City, and School taxes for 2020 are liens on said property.

7. A Declaration of Taking is being filed contemporaneously herewith.

WHEREFORE, the Plaintiff demands that:

(1) An Order be issued putting the Tennessee Valley Authority as agent of the United States of America into immediate possession of the property condemned.

(2) Just compensation for the property taken be ascertained in accordance with Rule 71.1(h) of the Federal Rules of Civil Procedure.

(3) A Judgment be entered confirming the vesting of title to the interests sought to be condemned in the United States of America by virtue of the Declaration of Taking filed herewith.

(4) The Plaintiff have such other relief as may be lawful and proper.

Respectfully submitted,

s/Michael V. Bernier

Michael V. Bernier (MS BAR 103960)
James S. Chase (TN BPR #020578)
TVA GENERAL COUNSEL'S OFFICE
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401
Telephone 865.632.3045
Facsimile 865.632.2422
Email mvbernier@tva.gov

Attorneys for Plaintiff

TRACT NO. PTFLO-15

A permanent easement and right-of-way, consisting of the perpetual right to enter and to erect, maintain, repair, rebuild, operate, and patrol lines of transmission line structures with sufficient wires and cables for electric power circuits and communication circuits, and all necessary appurtenances, including guy wires, in, on, over, and across said right-of-way, together with the perpetual right to clear said right-of-way and keep the same clear of structures (including but not limited to flagpoles, solar panels, buildings, signboards, billboards), trees, brush, stored personal property, and fire hazards, to destroy or otherwise dispose of such trees and brush; to prevent the drilling or sinking of wells within the right-of-way; and to remove, destroy, or otherwise dispose of any trees located beyond the limits of said right-of-way which in falling could come within five feet of any transmission line structure or conductor located thereon, the Tennessee Valley Authority to remain liable for any direct physical damage to the land and annual growing crops resulting directly from the operations of the construction and maintenance forces of its agents and employees in the erection and maintenance of or in exercising a right of ingress and egress to said transmission line structures, all upon, under, over, and across the following-described land:

TRACT NO. PTFLO-15

A strip of land located in Section 15, Township 6 North, Range 3 East, Rankin County, State of Mississippi, as shown on a map entitled "Philadelphia – Langford Transmission Line," drawing LW-7728, sheet P28B, R.3, a reduced scale copy of which is attached to the Declaration of Taking filed herein, the said strip being 100 feet wide, lying 50 feet on each side of the centerline of the transmission line location and the end boundaries of the strip being more particularly described as follows:

Commencing at a 3/8 inch rebar in the south right-of-way of Mississippi State Highway 25 and the northwest corner of David Leon Howie, Trustee of the Homer Lee Howie Living Trust DTD 2-17-1999, and Amended and Restated Living Trust dated May 31, 2013; thence in a northeasterly direction as measured along said right-of-way, 355.54 feet to the center of the location at station 182+53.15 and the Point of Beginning;

Thence leaving the point of beginning S. 3° 01' 39" E., 361.21 feet to a point of intersection at station 186+14.36, having the state plane coordinates of North: 1043161.58, East: 2404765.21; thence S. 42° 09' 22" E., 267.24 feet to a point in the west line of Pinelake Baptist Church of Rankin Co., Inc., at survey station 188+81.6 feet; said strip bounded on the north end by the right-of-way of Mississippi Highway 25 and on the south end by the common line with Pinelake Baptist Church of Rankin Co., Inc.

The above-described strip of land includes the centerline of the transmission line location for a net distance of 628.45 feet and containing 1.44 acres, more or less.

Furthermore, the above described easement rights are acquired with respect to appurtenant right, title, and interest as the owner of the land may have in Tract No. PTFLO-16, State of Mississippi (State Hwy. 25), the adjoining road right-of-way as shown on the map referenced above.

TRACT NO. PTFLO-15

Furthermore, the permanent easement rights include the perpetual right to install, maintain, and replace guy wires and necessary appurtenances outside the right-of-way for the transmission line structure located at survey station 186+14.36.

The above-described parcel of land is lying in the Northwest 1/4 of Section 15 Rankin County, Township 6 North, Range 3 East.

The coordinates, distances and directions of lines are referred to the Mississippi East Coordinate System, NAD83 (2011) Horizontal Datum, NAVD88 Vertical Datum.

This description prepared from a survey by: Tennessee Valley Authority, 1101 Market Street, MR-4B, Chattanooga, Tennessee 37402-2801

Record landowner as of the date of the filing of the Declaration of Taking — David Leon Howie, Trustee of the Homer Lee Living Trust as Amended and Restated Dated May 31, 2013 (Deed Books 2005 and 2014, pages 18058 and 3100, respectively)

Tax Map and Parcel No. I11 000074 00000
PPIN 034104

101502692

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Defendants.

NOTICE OF FILING OF DECLARATION OF TAKING

COMES NOW, the Tennessee Valley Authority, the authority empowered by law to acquire in the name of the United States of America the property described in the Complaint of similar title filed in this Court, by and through the undersigned counsel, and files the attached Declaration of Taking (Doc. 2-1). The property interest taken in this action is an easement and right-of-way described in Attachment 2 (Doc. 2-2). A map showing the location of the easement and right-of-way taken is attached as Attachment 3 (Doc. 2-3).

This 28th day of October, 2020.

Respectfully submitted,

s/Michael V. Bernier

Michael V. Bernier (MS BAR 103960)
James S. Chase (TN BPR #020578)
TVA GENERAL COUNSEL'S OFFICE
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401
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Facsimile 865.632.2422
Email mvbernier@tva.gov

Attorneys for Plaintiff

101492910

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
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RESTATED MAY 31, 2013,
Defendants.

DECLARATION OF TAKING

The Tennessee Valley Authority, the authority empowered by law to acquire in the name of the United States of America the property described in the Complaint of similar title filed in this Court, hereby files this Declaration of Taking pursuant to 40 U.S.C. §§ 3114-3118 (2012) and declares that said property is hereby taken for the use of the United States of America acting by and through its agent, the Tennessee Valley Authority, and further declares that:

1. The property interest taken in this action is the easement and right-of-way described in Attachment 1 attached hereto and made a part hereof.
2. Forty-three Thousand Seven Hundred Fifty Dollars (\$43,750) is the amount estimated by the Tennessee Valley Authority to be just and liberal compensation for the easement and right-of-way taken. This amount will be tendered into Court for the use of the persons entitled thereto.

3. A map showing the location of the easement and right-of-way taken is attached as Attachment 2.

4. The authority under which the easement and right-of-way is taken is the Tennessee Valley Authority Act of 1933, *as amended*, 16 U.S.C. §§ 831 et seq. The public use for which the easement and right-of-way is taken is the erection, operation, and maintenance of electric power transmission circuits and communication circuits.

5. The Tennessee Valley Authority is of the opinion that the ultimate award probably will be within any limits prescribed by Congress on the price to be paid.

TENNESSEE VALLEY AUTHORITY

Respectfully submitted,

s/Michael V. Bernier

Michael V. Bernier (MS BAR 103960)
James S. Chase (TN BPR #020578)
TVA GENERAL COUNSEL'S OFFICE
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401
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Email mvbernier@tva.gov

Attorneys for Plaintiff

101501784

TRACT NO. PTFLO-15

A permanent easement and right-of-way, consisting of the perpetual right to enter and to erect, maintain, repair, rebuild, operate, and patrol lines of transmission line structures with sufficient wires and cables for electric power circuits and communication circuits, and all necessary appurtenances, including guy wires, in, on, over, and across said right-of-way, together with the perpetual right to clear said right-of-way and keep the same clear of structures (including but not limited to flagpoles, solar panels, buildings, signboards, billboards), trees, brush, stored personal property, and fire hazards, to destroy or otherwise dispose of such trees and brush; to prevent the drilling or sinking of wells within the right-of-way; and to remove, destroy, or otherwise dispose of any trees located beyond the limits of said right-of-way which in falling could come within five feet of any transmission line structure or conductor located thereon, the Tennessee Valley Authority to remain liable for any direct physical damage to the land and annual growing crops resulting directly from the operations of the construction and maintenance forces of its agents and employees in the erection and maintenance of or in exercising a right of ingress and egress to said transmission line structures, all upon, under, over, and across the following-described land:

TRACT NO. PTFLO-15

A strip of land located in Section 15, Township 6 North, Range 3 East, Rankin County, State of Mississippi, as shown on a map entitled "Philadelphia – Langford Transmission Line," drawing LW-7728, sheet P28B, R.3, a reduced scale copy of which is attached to the Declaration of Taking filed herein, the said strip being 100 feet wide, lying 50 feet on each side of the centerline of the transmission line location and the end boundaries of the strip being more particularly described as follows:

Commencing at a 3/8 inch rebar in the south right-of-way of Mississippi State Highway 25 and the northwest corner of David Leon Howie, Trustee of the Homer Lee Howie Living Trust DTD 2-17-1999, and Amended and Restated Living Trust dated May 31, 2013; thence in a northeasterly direction as measured along said right-of-way, 355.54 feet to the center of the location at station 182+53.15 and the Point of Beginning;

Thence leaving the point of beginning S. 3° 01' 39" E., 361.21 feet to a point of intersection at station 186+14.36, having the state plane coordinates of North: 1043161.58, East: 2404765.21; thence S. 42° 09' 22" E., 267.24 feet to a point in the west line of Pinelake Baptist Church of Rankin Co., Inc., at survey station 188+81.6 feet; said strip bounded on the north end by the right-of-way of Mississippi Highway 25 and on the south end by the common line with Pinelake Baptist Church of Rankin Co., Inc.

The above-described strip of land includes the centerline of the transmission line location for a net distance of 628.45 feet and containing 1.44 acres, more or less.

Furthermore, the above described easement rights are acquired with respect to appurtenant right, title, and interest as the owner of the land may have in Tract No. PTFLO-16, State of Mississippi (State Hwy. 25), the adjoining road right-of-way as shown on the map referenced above.

TRACT NO. PTFLO-15

Furthermore, the permanent easement rights include the perpetual right to install, maintain, and replace guy wires and necessary appurtenances outside the right-of-way for the transmission line structure located at survey station 186+14.36.

The above-described parcel of land is lying in the Northwest 1/4 of Section 15 Rankin County, Township 6 North, Range 3 East.

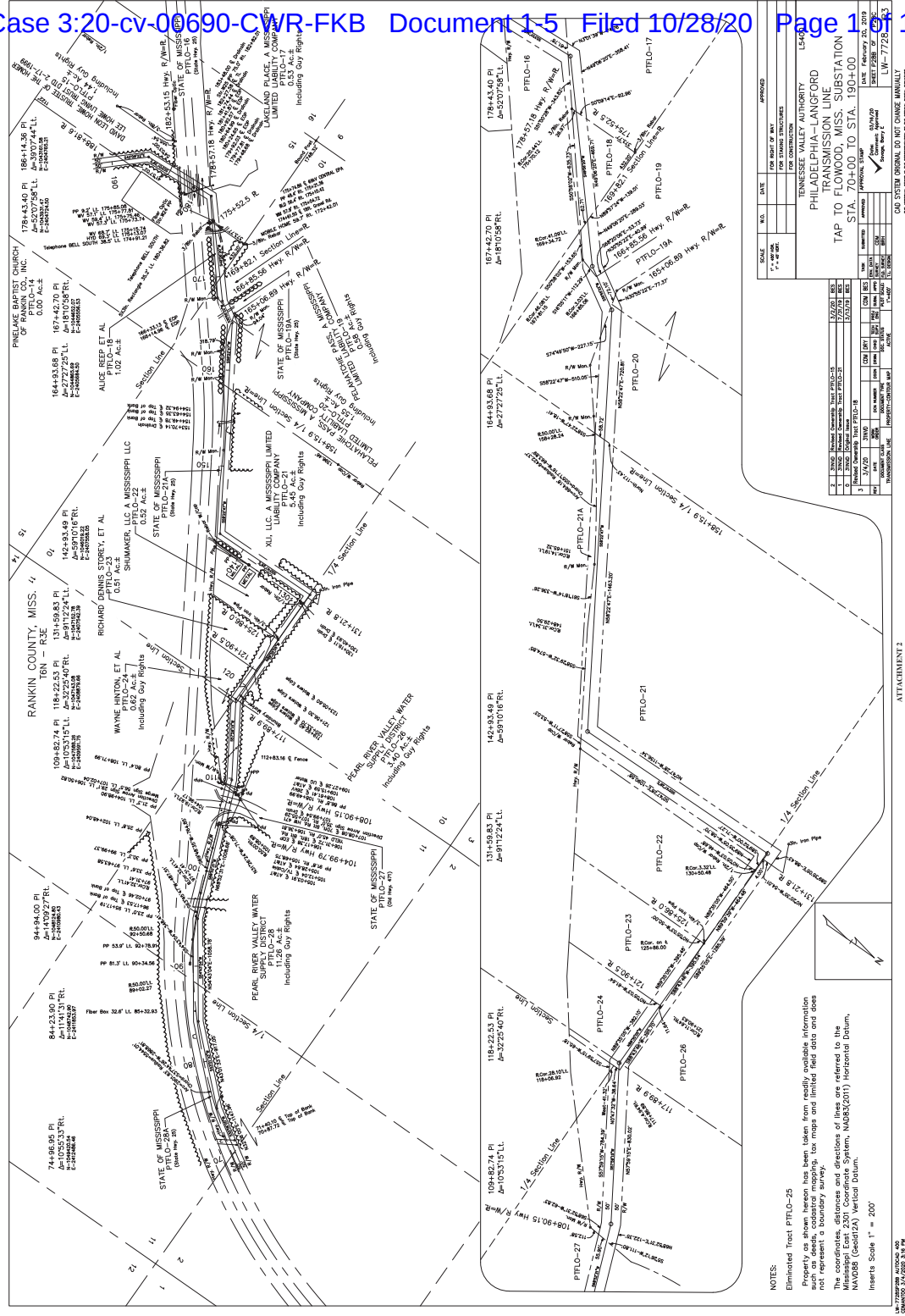
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This description prepared from a survey by: Tennessee Valley Authority, 1101 Market Street, MR-4B, Chattanooga, Tennessee 37402-2801

Record landowner as of the date of the filing of the Declaration of Taking — David Leon Howie, Trustee of the Homer Lee Living Trust as Amended and Restated Dated May 31, 2013 (Deed Books 2005 and 2014, pages 18058 and 3100, respectively)

Tax Map and Parcel No. I11 000074 00000
PPIN 034104

101502692



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Defendants.

NOTICE OF CONDEMNATION

TO: David Leon Howie, as Trustee with power of sale of The Homer Lee Howie
Living Trust as Amended and Restated May 31, 2013, 5360 I 55 North, Suite 105,
Jackson, Mississippi 39211

Pursuant to Federal Rule of Civil Procedure 71.1(d)(2), you are hereby notified that the Plaintiff has commenced the above-entitled action in the United States District Court for the Southern District of Mississippi to condemn an easement and right-of-way on and over land in which you have or claim an interest. Said land and the interest taken therein is described in Attachment 1 which is attached hereto and made a part hereof.

The authority for the taking is the Tennessee Valley Authority Act of 1933, *as amended*, 16 U.S.C. §§ 831 et seq.

You are further notified that if you desire to present any objection or defense to the taking of the property described in Attachment 1, you are required to file your answer with the Clerk of

the Court and to serve it on the Plaintiff's attorney within 21 days after service of this notice upon you. Your answer shall identify the property in which you claim to have an interest, state the nature and extent of the interest you claim, and state all of your objections and defenses to the taking. Your failure to file and serve an answer constitutes a consent to the taking and to the jurisdiction of the Court to proceed to hear the action and to fix the compensation.

If you have no objection or defense to the taking of this property you may instead file with the Clerk of the Court and serve on the Plaintiff's attorneys a notice of appearance designating the property in which you claim to be interested. Thereafter you will receive notice of all proceedings in this action affecting the property. In the event of a trial of the issue of just compensation, whether or not you have previously appeared or answered, you may present evidence as to the amount of the compensation to be paid for your property, and you may share in the distribution of the award.

Federal Rule of Civil Procedure 71.1(d)(2)(B) requires that an address be provided within the district in which this action is brought where the Plaintiff's attorneys may be served. Such an address is James S. Chase, Attorney, Tennessee Valley Authority, c/o Joshua L. Wooten Manager, Customer Service Center, Tennessee Valley Authority, 3197 Brooks Road, Belden, Mississippi 38826. However, Plaintiff prefers that service be made by mail addressed to James S. Chase, Attorney, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401.

Respectfully submitted,

s/Michael V. Bernier

Michael V. Bernier (MS BAR 103960)
James S. Chase (TN BPR #020578)
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Attorneys for Plaintiff

101483683

TRACT NO. PTFLO-15

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Tax Map and Parcel No. I11 000074 00000
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CIVIL COVER SHEET

3:20-cv-690-CWR-FKB

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA
upon the relation and for the use of the
TENNESSEE VALLEY AUTHORITY

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See page 2

DEFENDANTS

United States ex rel. TVA v. An Easement and Right-of-Way
over 1.44 Acres of Land, More or Less, in Rankin County,
Mississippi, and David Leon Howie, Etc.

County of Residence of First Listed Defendant Rankin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input checked="" type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
TVA Act, as amended, 16 U.S.C. §§ 831, et seq.

Brief description of cause:
Condemnation of an easement and right-of-way.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/28/2020

SIGNATURE OF ATTORNEY OF RECORD

s/Michael V. Bernier

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE